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Supreme Court

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1958.

No. 376

IN THE MATTER OF

ABRAHAM TEITELBAUM, AN ATTORNEY,

Petitioner.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Rule 59.

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Comes now Charles Leviton, heretofore appearing as *amicus curiae* in the matter of Abraham Teitelbaum, an attorney, petitioner, the opinion of which is reported in 13 Ill. 2d 586, and says that a review on writ of certiorari should not be granted for the following reasons:

1. There is no special or important reason therefor, as required by Rule 19 of this Court.

2. The petitioner in the Court below raised no question under the Federal Constitution and the matters and things here presented were not within the contemplation of Rule 19.

In view of the fact that the petition for certiorari does not comply with the requisites of Rule 19 of this Court, and in an effort to bring order out of chaos, the undersigned makes the following suggestions, in as informal a manner

as possible, so that it will be readily apparent that the petition is frivolous in its nature and the questions raised require no formal or extensive briefing.

1. THE PROCEEDINGS BELOW.

The proceedings below were brought under the provisions of Rule 59 of the Rules of the Supreme Court of Illinois, which provides for the appointment of Commissioners of the Court to make investigations concerning practices of attorneys at law which tend to defeat the administration of justice or to bring the courts and the legal profession into disrepute. This rule in most respects is not materially different from the Rules of Court for Disciplinary Proceedings adopted by the House of Delegates of the American Bar Association on February 21, 1936.

The Rule provides, among other things, that the Commissioners, if action by the Supreme Court of Illinois is recommended, shall make report to the Court of conclusions of fact and law concerning a complaint, answer and proof; that if after the report is filed the respondent files exceptions, a member of the bar shall be designated to file such certificates of proof, additional abstracts and briefs as may be necessary fully to advise the Court in support of the report of the Commissioners. An *amicus curiae* has been designated in each instance in these cases since 1933 when the system of reports by Commissioners was first adopted, and the undersigned has so participated in proceedings originating before the Committee on Grievances of The Chicago Bar Association as Commissioner of the Supreme Court of Illinois, since 1935.

The undersigned has filed with the Clerk the following portions of the record before the Supreme Court of Illinois, properly certified by the Clerk of that Court:

(1) The report of the Commissioners.

(2) The objections filed by the respondent to the report.

(3) The exceptions to the report, filed by the respondent in the Supreme Court of Illinois.

(4) Brief and Argument of Respondent.

(5) Additional Abstract of Record, filed by the undersigned.

An inspection of the objections of the respondent in the Supreme Court of Illinois, his brief and argument, and his petition for rehearing, fails to disclose the bringing before the State Court of any Federal question.

2. THE BASIS FOR JURISDICTION.

The jurisdiction, if any, of this Court may be invoked under Title 28 of the Judicial Code, Section 1257.

The petitioner has mentioned that jurisdiction is also invoked "under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States," and has also claimed that "the Applicability of the Full Faith and Credit Clause is also of major importance."

No contentions based upon these constitutional grounds were ever presented to the Supreme Court of Illinois.

3. QUESTIONS PRESENTED.

(1) Has the petitioner set up any right, title, privilege or immunity under the Federal Constitution?

An inspection of the record shows that the petitioner in the court below raised no question under the Federal Constitution. His answer to the complaint (Report, pp. 3-5; Abstract of Record, pp. 5-38), is completely devoid of any tender of an issue involving the Federal Constitution. His objections (Abstract, pp. 39-43) and his exceptions (Abstract, pp. 69-75), his brief and argument and his petition

for rehearing, likewise have failed to raise any question under the Federal Constitution.

The petitioner cannot raise Federal questions here when he did not raise them in the Supreme Court of Illinois.

Hulbert v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1025.

(2) Will the Supreme Court of the United States take jurisdiction over a judgment involving a question peculiarly of state law?

The mere fact that the decision below may have been erroneous does not confer jurisdiction upon the Court. This proposition is elementary. The fact that a Federal Court may have decided that respondent's conviction of a Federal crime did not involve moral turpitude, does not preclude the Supreme Court of Illinois from passing upon the effect of such a conviction. Even where practice before this Court is concerned, this Court has held that it will not hesitate to uphold the discipline of an attorney, where character requisite for membership in the bar is lacking, in the absence of some grave reason to the contrary.

In re Isserman, 345 U. S. 286, pp. 288, 289.

Selling v. *Radford*, 243 U. S. 46, pp. 50, 51.

McCallum v. *Board of Managers and Grievance Committee of Chicago Bar Association*, 326 U. S. 689.

Bute v. *People of the State of Illinois*, 333 U. S. 640, p. 659, 68 S. Ct. 763.

Ex Parte Wall, 107 U. S. 265, pp. 271, 290.

Tinkoff v. *United States*, 212 F. 2d 18, pp. 19-20.

Phipps v. *Wilson*, 186 F. 2d 748, p. 752.

Mitchell v. *Greenough*, 100 F. 2d 184, p. 185.

Central Land Company v. *Laidley*, 159 U. S. 103, p. 112.

ARGUMENT.

I.

The Petitioner Has Not Set Up Any Right, Title, Privilege or Immunity Under the Federal Constitution.

Nowhere in the record can any contention be found that any part of the Federal Constitution was violated.

The Judicial Code, Title 28, Section 1257, clearly provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review and determination any cause wherein a final judgment or decree has been rendered by the highest court of a state in which a decision could be had, where "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." There being no such right set up or claimed, there is nothing for this Court to review.

In *Hulbert v. Chicago*, 202 U. S. 275, 50 L. Ed. 1026, the Court held that the plaintiff had failed to comply with the statutory provision in setting up a right under the Constitution of the United States; that there was no evidence in the record to show that the decision of either the trial court or the Supreme Court of Illinois, whose judgment was questioned, was invoked by plaintiff in error upon a right claimed under the Constitution of the United States. The writ of error was therefore dismissed. This rule is so elementary and of such long standing that no further discussion of the issues involved would seem necessary.

II.

The Question Below Is One Peculiarly Involving State Law

As the Court said in *In re Isserman*, 345 U. S. 286 (p. 288):

> "Disbarment by a state does not automatically disbar members of our bar, but this Court will, in the absence of some grave reason to the contrary, follow the finding of the state that the character requisite for membership in the bar is lacking, *Selling* v. *Radford*, 243 U. S. 46 (1917)."

And (p. 289):

> "There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice."

In *Selling* v. *Radford*, 243 U. S. 46, Radford, who had been originally a member of the bar of the State of Michigan and then had been admitted to the Supreme Court of the United States, was respondent in an action to disbar him from the Supreme Court of the United States on the basis of an opinion and order of disbarment entered by the Supreme Court of Michigan. The Court held that it had no authority to re-examine or reverse as a reviewing court the action of the Supreme Court of Michigan in disbarring Radford. As to whether or not Radford should continue as a member of the Supreme Court of the United States, the Court held that it would recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or more of the following conditions should appear (p. 51):

> "1. That the state procedure from want of notice or opportunity to be heard was wanting in due process; 2. that there was such an infirmity of proof as to facts found to have established the want of fit-

private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

Similar questions were raised by William Wallace McCallum, who was disbarred by the Supreme Court of Illinois in *In re McCallum*, 391 Ill. 400, and whose appeal was dismissed for want of a substantial Federal question, in *McCallum* v. *Board of Managers and Grievance Committee of Chicago Bar Association*, 326 U. S. 689.

In *Bute* v. *People of the State of Illinois*, 333 U. S. 640, the Court held (p. 659), that even in a criminal case "the procedure followed by Illinois should not be held to violate the standard of permissible process of law broadly recognized by the Fourteenth Amendment unless the Illinois procedure violates 'the very essence of a scheme of ordered liberty' and that to continue it would 'violate a "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."' "

In *Ex Parte Wall*, 107 U. S. 265, there was brought into question in a petition for mandamus filed in the Supreme Court of the United States, the validity of an order of a Federal District Judge prohibiting Wall from practicing at the bar of the District Court. The Court upheld the validity of the order of the District Court, and held that the attorney had had due process, in that (p. 290) "due notice was given to the petitioner, and a trial and hearing was had before the court, in the manner in which proceedings against attorneys, when the question is whether they should be struck off the roll, are always conducted."

In *Tinkoff v. United States*, 212 F. 2d 18, the Court of Appeals for the Seventh Circuit had before it an effort by Tinkoff to file a petition to vacate an order denying him leave to file a petition for reinstatement to the bar of the Federal District Court. Tinkoff had been disbarred by the Supreme Court of Illinois and had been subsequently held guilty of contempt of court for the unauthorized practice of law in *People ex rel. Chicago Bar Association v. Tinkoff*, 399 Ill. 282, certiorari denied, 334 U. S. 83. The Court stated (pp. 19-20):

> "Seeking to annul these orders, appellant insists he possesses a 'right', to petition, of so potent a status that the district judge must receive and entertain his petition. This is the framework on which he hangs argument raising constitutional questions. Mr. Justice Vinson, when delivering the order of the Court reported as *In re Isserman*, 1953, 345 U. S. 286, 290, 73 S. Ct. 676, 677, 97 L. Ed. 1013, aptly said:
>
> "' * * *There is no vested right in an individual to practice law.* Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice. That to the individual disbarred there is a loss of status is incidental to the purpose of the Court and cannot deter the Court from its duty to strike from its rolls one who has engaged in conduct inconsistent with the standard expected of officers of the Court.' (Italics ours.)
>
> "Certainly that quotation goes far toward cutting the ground from under appellant's thesis. Nor is this a recent concept of the license to practice law. See *Ex parte Wall*, 1882, 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552.
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> * * * * *
>
> "Long ago Mr. Justice Cardozo, speaking for the Court reviewing *in re Rouss*, 1917, 221 N. Y. 81, 116 N. E. 782, 783, said:
>
> > 'Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that

condition is essential at the moment of admission; but it is equally essential afterwards * * *. Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. To strike the unworthy lawyer from the roll is not to add to the pains and penalties of crime.'"

In *Phipps* v. *Wilson*, 186 F. 2d 748, the Court said (p. 752):

"The real basis for plaintiff's complaint seems to be that it was the Chicago Bar Association which investigated the charges against him and recommended disbarment. Plaintiff claims that the Bar Association's committees were prejudiced against him. A similar objection was made and overruled in *In re McCallum*, 391 Ill. 400, 64 N. E. 2d 310, a disbarment proceeding. The court there pointed out that since 1933 committees of the Chicago Bar Association have acted as commissioners of the Illinois Supreme Court in disciplinary proceedings brought against attorneys at law in Chicago. See: Rule 59, Supreme Court Rules of Practice and Procedure, Ch. 110, Smith-Hurd Ill. Anno. Stat. § 259.59. The court emphasized that such commissioners are merely the court's agents for the purpose of gathering and reporting the evidence and that their recommendations are purely advisory. The court said 391 Ill. at page 418, 64 N. E. 2d at page 317: 'The recommendations made are purely advisory and this court acts only after an examination of the evidence in the case, except where no answer is made by respondent, and in these cases the charges and supporting evidence are examined before action is taken by this court.'

"It is significant that McCallum did not file a petition for certiorari, but sought access to the United States Supreme Court by direct appeal, attacking the constitutionality of Rule 59. However, the Supreme Court dismissed the appeal, holding that it did not

raise any substantial federal question. *McCallum v. Board of Managers and Grievance Committee of Chicago Bar Association*, 326 U. S. 689, 66 S. Ct. 142, 90 L. Ed. 405.

"In considering whether the procedure herein before the Supreme Court of Illinois and the commissioners was a denial of due process, the applicable principles authoritatively stated in *Bute* v. *Illinois*, 333 U. S. 640, 659, 68 S. Ct. 763, 773, 92 L. Ed. 986, are: '* * * So here the procedure followed by Illinois should not be held to violate the standard of permissible process of law broadly recognized by the Fourteenth Amendment unless the Illinois procedure violates "the very essence of a scheme of ordered liberty" and its continuance would "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" * * *'

"As the amended complaint shows that plaintiff was apprized of the charges filed against him, and that he had a reasonable opportunity to defend thereagainst, the procedure complained against did not violate a scheme of ordered liberty or a deep rooted principle of justice. In other words, we find that plaintiff was not denied federal due process of law."

The case of *In re Summers*, 325 U. S. 561, has no application, the issue there being one which brought into question whether or not the principles of religious freedom which the Fourteenth Amendment to the Constitution of the United States secures against state action had been violated by the denial to Summers of the right to practice law in Illinois.

In *Mitchell* v. *Greenough*, 100 F. 2d 184, the Court said (p. 185):

"We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. *Bradwell* v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929. In *Green* v. *Elbert*

8 Cir., 63 F. 308, the Circuit Court of Appeals held that the conspiracy to deprive a lawyer of his right to practice law in the state courts was not a conspiracy to interfere with any right or privilege 'granted, secured or protected by the Constitution of the United States.'"

In *Central Land Company* v. *Laidley*, 159 U. S. 103, this Court said (p. 112):

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States."

III.

Petitioner's Petition Is Frivolous and Vexatious.

The undersigned does not intend at this stage of the proceedings to discuss the merits of the case at length or those decisions of the Supreme Court of the United States and other Federal Courts which indicate that what respondent was convicted of involved moral turpitude. No ground appears for a reversal of the decision of the Supreme Court of Illinois, constitutional or otherwise.

Conclusion.

It is submitted that Teitelbaum's petition for writ of certiorari should be denied, and that the writ should not be granted.

Respectfully submitted,

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Heretofore appearing as amicus curiae in the Supreme Court of Illinois for the Board of Managers and the Committee on Grievances of The Chicago Bar Association, Sitting as Commissioners of the Supreme Court of Illinois under Rule 59.